84-877

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

WILLIAM HILDMANN,

Petitioner,

VS.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTIONS PRESENTED FOR REVIEW

Did the Appellate Court's Order improperly interpret and apply the factors to be considered in determining the ability of an informant's tip to justify an investigatory stop, in direct contravention to the "totality of circumstances" test enunciated by this Court in Illinois v. Gates, ___ U.S. ___, 103 S.Ct. 2317 (1983), and the defendant's Fourth Amendment guarantees.

TABLE OF CONTENTS

Questions Presented for Review i

Table of Contents ii

Table of Authorities iii

Citations to Opinions Below 1

Jurisdictional Statement 2

Statement of the Case 3

Reasons for Granting the Writ 11

Introduction 11

I.

THE APPELLATE COURT ERRED IN REVERSING AND REMANDING THE TRIAL COURT'S DECISION TO QUASH THE ARREST AND SUPPRESS THE RESULTING EVIDENCE, SINCE THE INFORMANT'S TIP WAS UNRELIABLE GIVEN THE TOTALITY OF THE CIRCUMSTANCES, AND THE OFFICERS, RELYING EXCLUSIVELY UPON THAT TIP, LACKED SUFFICIENT, ARTICULABLE FACTS TO JUSTIFY THE INVESTIGATORY STOP. 20

Conclusion 39

TABLE OF AUTHORITIES

Page

Adams v. Williams, 407 U.S. 143 (1972) 12,14, 15,21,22,23

Aguilar v. Texas, 378 U.S. 108, 109 (1964). 30

Draper v. United States, 358 U.S. 307 (1959) 16,18, 27,32,33,37,38

Illinois v. Gates, ___ U.S. ___, 1035 S.Ct. 2317 (1983) 24,25, 26,29,30

Jones v. United States, 362 U.S. 257 (1960). 29

McCray v. Illinois, 386 U.S. 300 (1967) 35,36

Spinelli v. United States, 393 U.S. 419 (1969). 33,35 37,38,39,40

Terry v. Ohio, 392 U.S. 1 (1968). .10,12 13,21

No.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

WILLIAM HILDMANN,	)
	)
Petitioner,	)
	)
-Vs-	)
	)
PEOPLE OF THE STATE OF ILLINOIS,	)
	)
Respondent.	)

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

CITATIONS TO OPINIONS BELOW

The above-entitled case was originally brought in the Circuit Court of Cook County, Criminal Division. On April 23, 1982, following a hearing of the evidence, the Honorable Eugene E. Campion, presiding, granted the defendant's motion to quash arrest and suppress the evidence. On February 14,

1982, following a hearing and re-examination of the facts in light of recent decisions, the Circuit Court sustained the defendant's motion to suppress and denied the state's petition for rehearing. The Order of the Appellate Court reversing the lower court's decision and denying the defendant's petition for rehearing appears in the Appendix to this Petition (App., p. 2 et seq.).

JURISDICTIONAL STATEMENT

The motion to quash arrest and suppress the evidence was entered by the Circuit Court on April 23, 1982, and then sustained on February 14, 1982. On April 16, 1984, the Appellate Court of Illinois

reversed and remanded the lower court's decision. Subsequently, on June 11, 1984, the Appellate Court denied on defendant's petition for rehearing. The Supreme Court of Illinois denied defendant's petition for leave to appeal on October 2, 1984. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

STATEMENT OF THE CASE

This appeal concerns the use of an informant's tip as the basis for conducting an investigatory stop of William Hildmann, absent the police officers' observation of criminal activity necesssary to provide the officers with a reasonable suspicion that

a crime had been, was being or was about to be committed. Defendant filed a motion to quash his arrest and suppress the evidence in the trial court. Following a hearing on the motion to suppress on April 23, 1982, the Honorable Eugene Campion held that the informant's tip was inadequate and granted the defendant's motion to quash the arrest and suppress the resulting evidence.

At the evidentiary hearing held on April 23, 1982, defendant testified that at approximately 8:00 p.m. on November 30, 1981, he was driving a van in the vicinity of 801 West Buena in Chicago, Illinois. (Tr. p. 3). As he drove the van toward the intersection of Buena Avenue and Sheridan Road, three Chicago police officers jumped out of their car

with guns drawn, and motioned for the defendant to stop and get out of the van. (Tr. p. 4). The officers then arrested the defendant and searched the van. (Tr. p. 4, 29). The officers did not have either a search or arrest warrant at this time. (Tr. p. 4).

After searching the van and finding two small packets of white powder and a .25 automatic pistol, the police officers transported the defendant to the Area 6 police station at the corner of Belmont and Western Avenues in Chicago, Illinois. (Tr. pp. 7, 30). There, several police officers attempted to coerce the defendant into signing a blank consent form (Tr. p. 9) by keeping him handcuffed to a wall in a dark station room for several hours. (Tr.

pp. 6, 9). Police officers repeatedly told defendant that he would not be allowed to make his allotted phone call until he signed the blank form. (Tr. p. 10). One officer went so far as to bang the defendant's head on a wall in an attempt to coerce him into signing the blank consent form. (Tr. pp. 10-11). The form which the defendant testified was blank eventually became a consent form allowing the police to search an apartment at 7240 Park Avenue, Summit, Illinois. (Tr. p. 13). The defendant testified that he never lived in an apartment at that address. (Tr. p. 14).

Officer Barrett J. Moran of the Chicago Police Department testified that at approximately 7:45 p.m. on November 30, 1981, he spoke with an informant who

had supplied information to the Police Department previously. (Tr. p. 25). The unnamed informant told the officer that he had just spoken with a white male who was driving a black over gray van. (Tr. p. 25). The informant stated that the white male would be at the corner of Sheridan Road and Buena Avenue in Chicago, Illinois, at 8:00 p.m. that evening for the purpose of selling cocaine. (Tr. p. 25). The informant never actually saw any cocaine in the possession of the male with whom he had spoken. (Tr. p. 25).

Officer Moran then proceeded to the corner of Buena Avenue and Sheridan Road with two other officers. (Tr. p. 27). Officer Moran testified that they waited near that corner for five to ten minutes

before defendant arrived. (Tr. p. 28). After the defendant arrived, no other person aproached the van for another five to ten minutes. (Tr. p. 28). Since the defendant fit the officer's description of a white male in a black over gray van, the officers approached the van and requested that the defendant get out. (Tr. p. 28). At this time the officer claimed that he saw the .25 automatic pistol in plain view on the floor of the van. (Tr. p. 29). Officer Moran testified that to his knowledge the defendant was not violating any federal or state statute, nor was he violating any municipal ordinance prior to the arrest. (Tr. p. 39). The officer also testified that when the officers exited their car and approached the van, they

did not intend to arrest the defendant. (Tr. p. 39). The officer stated, "If we didn't find anything wrong, we wouldn't have [arrested the defendant]." (Tr. p. 39). After a factual hearing, the trial court found that the informant's tip in this case was inadequate to grant the defendant's motion to quash the arrest and suppress the resulting evidence. (Tr. p. 48). On the State's motion for rehearing, the trial court continued to find the tip inadequate to establish probable cause on the basis that the informant did not see Hildmann sell any contraband, nor did he allege he had purchased any from Hildmann, and that the informant had not even seen any contraband in the van or in Hildmann's possession. The Appellate Court reversed

in an order pursuant to Ilinois Supreme Court Rule 23*, ruling that once the informant's tip was corroborated by the police, a proper Terry stop ensued, during which a gun was discovered in plain view. Observance of the gun by the police officers, provided the necessary probable cause to arrest Hildmann for possession of a weapon, which in turn justified the subsequent search of the van.

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*The relevant portion of Illinois Supreme Court Rule 23 states generally:

> All cases not required to be disposed of by a written order which shall succinctly state the facts, the contentions of the parties, the reasons for the decision, the disposition, and the names of the participating judges.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

This petition presents several important issues for review under the Fourth Amendment of the United States Constitution. The decision below is not only inconsistent with the prior decisions of this Court, but it also illustrates the ability of lower courts to misinterpret and misapply the "totality of the circumstances" test in direct contravention to this Court's decision in Illinois v. Gates.

Contrary to the decisions of this Court, the Illinois Appellate Court effectively held that in determining the veracity of an informant's tip to establish probable cause for an arrest or

reasonable suspicion for an investigatory stop, the test is not the totality of the circumstances, but rather the existence of any circumstances.

A valid Terry stop requires that the police officer have a reasonable inference that the person is committing, is about to commit, or has committed an offense. In Adams v. Williams, 407 U.S. 143 (1972), this Court held that an informant's tip could justify a Terry stop if the information received by the informant carried enough indicia of reliability to justify the officer's forcible stop. Adams, supra, 407 U.S. at 147. Quoting Justice Friendly's dissent in the Court of Appeals decision, Justice Brennan expressed thoughts of concern

regarding the extension of a Terry stop to mere possessory offenses:

> Terry v. Ohio was intended to free a police officer from the rigidity of a rule that would prevent his doing anything to a man reasonably suspected of being about to commit or having just committed a crime of violence, no matter how grave the problem or impelling the need for swift action, unless the officer had what a court would later determine to be probable cause for arrest. It was meant for the serious cases of imminent danger or of harm recently perpetrated to persons or property, not the conventional ones of possessor offenses. If it is to be extended to the latter at all, this should be only where observation by the officer himself or well authenticated information shows 'that criminal activity may be afoot.' 392 U.S. at 30 . . . . I greatly fear that if the [contrary view] should be followed, Terry will have opened the sluicegates for serious and unintended erosion of the protection of the Fourteenth Amendment." (emphasis supplied).

Adams, supra, 407 U.S. at 151-53 (J. Brennan, dissenting), quoting Adams v. Williams, 436 F.2d 30, 38-39 (J. Friendly, dissenting).

In the instant case, the police officers had no personal knowledge that the defendant was involved in criminal activity. Instead, the officers relied exclusively upon an informant's tip indicating that a white male would be arriving in a van, at a certain time and place for the purpose of selling narcotics. Upon arrival at the designated location, the police observed a white male sitting inside a van, similar to the one described by the informant. However, the officers failed to observe suspicious behavior, let alone criminal conduct. Lacking personal knowledge or observance

of any suspicious activity, the police relied exclusively upon the information provided by the informant. Despite this reliance, and contrary to this Court's decisions in Adams and Gates, the Appellate Court failed to apply the "totality of circumstances" test to determine whether the information provided by the informant carried sufficient indicia of reliability to establish reasonable suspicion and justify the subsequent intrusion upon Hildmann's rights. Specifically, the Appellate Court failed to analyze both the informant's reliability and the basis for his knowledge. More significantly, however, the Appellate Court failed to consider, perhaps the most important aspect of the totality of the circumstances test, independent

corroboration of the informant's tip. The Appellate Court erroneously held that the corroboration aspect was satisfied by the police officers' observance of a white man in a van at the time and place indicated by the informant. However, defendant contends that the police officers' observation of self-verifying facts, i.e., the arrival of a similar van, at the same time and place as that indicated by the informant, does not satisfy the "corroboration" factor in situations where the criminal activity can, and according to the informant, should be personally observed by the officers. The police officers' use of self-verifying facts to fulfill the "corroboration" aspect is only proper in situations such as that found in Draper

v. United States, 358 U.S. 308 (1958), where the informant provided police with a detailed description of the defendant and indicated that the defendant would be carrying contraband in a small tan zipper bag, criminal activity which is entirely unobservable by police since they are unable to determine whether in fact, the defendant is carrying narcotics, and consequently are forced to use the existence of self-verifying facts as provided by the informant to establish reliability and subsequently infer that the defendant is probably transporting narcotics. In the instant case however, the alleged sale of narcotics which, according to the informant, would transpire between a white male in the van, and persons approaching the van,

was easily observable by police. In contrast to Draper, the illegal activity in the case at bar, was allegedly set to occur in open view. Therefore, since the police officers were capable of corroborating the informant's tip and determining the existence of criminal activity through personal observation, directly, they must not now be allowed to have inferred both the informant's reliability and defendant's criminal acts, indirectly, through the verification of entirely innocent conduct.

Whether or not this Court determines that corroboration of criminal activity must be made whenever possible, the fact remains that the officers did not observe the most important aspect of the informant's tip, the sale of narcotics.

Contrary to the informant's tip, there was no exchange of money or other items between persons in or out of the van. In fact, no persons approached the van at any time, nor was there any evidence or circumstance characteristic of a sale of narcotics.

The order of the Appellate Court fails to illustrate the inherent analysis of the totality of circumstances test, the consideration and balancing of the informant's overall reliabilty with the lack of independent corroborative evidence. Instead, the Appellate Court severely misconstrues the facts of this case in order to find some justification for determining that the informant's tip was sufficient to establish the reasonable suspicion necessary for the investigative stop.

Defendant believes that the question presented for review by this Petition requires and deserves review and comment by this Court in order to set forth the proper interpretation of the "totality of the circumstances" test and provide lower courts with the proper guidelines necessary in applying that test.

I.

THE APPELLATE COURT ERRED IN REVERSING AND REMANDING THE TRIAL COURT'S DECISION TO QUASH THE ARREST AND SUPPRESS THE RESULTING EVIDENCE, SINCE THE INFORMANT'S TIP WAS UNRELIABLE GIVEN THE TOTALITY OF THE CIRCUMSTANCES, AND THE OFFICERS, RELYING EXCLUSIVELY UPON THAT TIP, LACKED SUFFICIENT, ARTICULABLE FACTS TO JUSTIFY THE INVESTIGATORY STOP.

The Order of the Appellate Court premised its holding upon the finding of

a proper investigatory stop under Terry v. Ohio, 392 U.S. 1 (1968). In Terry, this Court held that a police officer could briefly detain an individual to determine his identity or to maintain the status quo if and only if the officer had a reasonable suspicion that the person had committed, was committing, or was about to commit an offense. Id. at 10; Adams v. Williams, 407 U.S. 143, 146 (1972). However, to prevent against potential abuse of individual rights under the Fourth Amendment, this Court cautioned that to justify an investigative stop, the "reasonable suspicion" must be grounded on the officer's knowledge of specific, articulable facts that the individual is involved in criminal activity. Terry, supra, 392 U.S. at 21.

Therefore, a police officer, to properly detain or question an individual, must have knowledge of certain facts, either through personal observations or investigations, which when taken together with the rational inferences from those facts, raises a reasonable suspicion that the person is involved in some criminal activity.

In Adams v. Williams, 407 U.S. 143, 147 (1972), this Court rejected the argument that the specific facts to justify an investigatory stop must be based on an officer's personal observations, rather than on information supplied by informants. Although realizing that informants' tips can be an effective source of information with which police officers can accumulate the facts necessary to

justify a stop, this Court also recognized that facts received from an informant are hearsay and consequently, less reliable than those facts personally observed by the officer. To balance the state's interest in having access to this information, as well as the interest of protecting persons from unwarranted intrusion, this Court in Adams, qualified the use of informants' tips to those situations where the informant's tip is first proven reliable. Adams, supra, 407 U.S. at 147. The relability criteria must be satisfied to some extent, regardless of whether the informant's reliability is being challenged by a magistrate for purposes of issuing a search or arrest warrant or by a police officer seeking to justify an investigatory

stop. In the latter situation, a police officer's substitution of facts personally observed with facts provided by an informant is effectively conditioned upon a conclusion that the information received is reliable. If, as in the instant case, the police officer lacks the time needed to obtain a warrant, the officer must determine the reliability of the informant's tip in light of the totality of circumstances all information and its rational inferences known to the officer which support the officer's belief as to the informant's reliability.

However, the "totality of the circumstances" test enunciated by this Court in Illinois v. Gates, ____ U.S. ____, 103 S. Ct. 2317 (1983), did not extinguish

the pre-existing considerations of the informant's credibility and the basis for his knowledge. Realizing that lower courts had transformed the "reliability" and "basis of knowledge" factors from general considerations to strict requirements which had to be independently and completely satisfied, this Court in Gates, merely expanded the determination of reasonable suspicion to include consideration of "reliability" and "knowledge", as well as all other information known to the officer or magistrate.

With respect to the extension of these factors to a totality of the circumstances, this Court stated:

> an informant's "veracity," "reliability" and "basis of knowledge" are all highly relevant in

> determining the value of [the informant's] report. We do not agree, however, that these elements should be understood as entirely separate and independent requirements to be rigidly exacted in every case . . . . Rather,. . . they should be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is "probable cause" to believe that contraband or evidence is located in a particular place.

Gates, ____ U.S. ____, 103 S. Ct. at 2327-28. Furthermore, this Court held that "veracity" and "basis of knowledge" need not be independently satisfied, but rather, "a deficiency in one may be compensated for . . . by a strong showing as to the other, or by some other indicia of reliability." Id. at 2329.

The veracity element may be satisfied by showing that the informant has, on

previous occasions, provided the officer with information which has resulted in valid arrests and convictions. Draper v. United States, 358 U.S. 307, 312-13 (1959). In addition, the informant's reliability can also be illustrated by the occurrence of self-verifying facts, detailed facts of innocent conduct, provided by the informant, which upon occurrence indicate the informant's reliability, personal knowledge of the defendant's conduct, and raise the inferences that the informant's tip as to the criminal activity is also reliable. Draper, supra, 358 U.S. at 313.

Under these standards, the informant's reliability in the instant case may be supported by the fact that he had previously supplied the officer with

information which resulted in convictions. Also, the "knowledge" element was adequately satisfied by the informant's disclosure to the officer, "that he had just had a conversation with the [defendant]." (Tr. p. 25). However, given the totality of the circumstances, the minimal satisfaction of these two elements, balanced against the absence of corroborating evidence and the resulting inaccuracy of the informant's tip, is entirely insufficient to establish the informant's reliability and justify the subsequent investigatory stop. Had the Appellate Court of Illinois properly applied the totality of circumstances test in this case it would have correctly determined that the "seizure" of William Hildmann was based exclusively on an

unreliable tip, and was consequently violative of his Fourth Amendment rights.

This Court, applying the totality of circumstances analysis to determine an informant's reliability, has repeatedly recognized the importance of police corroboration of an informant's tip. Gates, supra, 103 S. Ct. at 2334. In Gates, this Court, citing Jones v. United States, 362 U.S. 257 (1960), stated:

> in making a warrantless arrest an officer "may rely upon information received through an informant, rather than upon his direct observations, so long as the informant's statement is reasonably corroborated by other matters within the officer's knowledge." (Emphasis supplied).

Gates, supra, 103 S. Ct. at 2334. In fact, the Gates opinion implies that the "corroboration" element is not only significant but determinative:

> Likewise, we recognized the probative value of corroborative efforts of police officials in Aguilar . . . by observing that if the police had made some effort to corroborate the informant's report at issue, "an entirely different case" would have been presented.

Id., citing Aguilar v. Texas, 378 U.S. 108, 109 (1964).

In the instant case, the Appellate Court failed to consider the lack of corroborative evidence on the part of the police. The Court's only discussion of anything slightly resembling "corroboration" is simply a reiteration of the facts followed by a one-sentence, unsubstantiated conclusion:

> the informant told the police that at approximately 8 p.m. on the date in question, a black-over-gray van would be present at the intersection of Sheridan Road and Buena Avenue and that the driver of that van, who would be a white

> male, would have cocaine and would be present for the purpose of selling the cocaine to another person. The police arrived at that intersection less than ten minutes later and observed a black-over-gray van with a white male driver, who was defendant. Therefore, the police were able to verify the information given to them by the informant. In view of these facts, we are of the opinion that once this verification took place, the arresting police officers had specific and articulable facts which warranted their investigatory stop of defendant.

(People of the State of Illinois v. Hildmann, No. 83-593). (App., p. 14-15). In the present case, the Appellate Court erroneously concluded that the police officer's observation of innocent conduct was sufficient to satisfy the corroboration factor and imply criminal conduct.

This Court has allowed a police officer's observations of innocent conduct to establish "corroboration" and

illustrate the informant's reliability in situations where the surrounding circumstances make it impossible for a police officer to personally observe the criminal conduct. A classic example of this situation was present in Draper v. United States, 358 U.S. 307 (1959). There, the informant provided police with an extremely detailed description of the defendant, i.e., the clothing he was wearing and the particular piece of luggage that would contain heroin. Relying primarily on the detailed description and the police officer's inability to prsonally observe the criminal activity, that is, the defendant's actual possession of narcotics, this Court

allowed the corroboration of innocent conduct to establish the informant's reliability and infer the criminal behavior.

However, this Court's subsequent decisions indicate that the determinative factor in Draper was the unusually detailed description of the defendant and the criminal activity in which he would allegedly engage. Without this, the Court implied that the police officer's observance of innocent conduct would not have been sufficient to satisfy "corroboration" and imply criminal behavior.

In Spinelli v. United States, 393 U.S. 418 (1969), an informant told an FBI agent that the defendant was running a bookmaking operation from an apartment

located in St. Louis, Missouri. The FBI conducted a surveillance of the defendant and on four occasions saw him drive from Illinois to St. Louis, park his car at a St. Louis apartment house parking lot, and enter an apartment which contained two telephones with specified numbers. Despite this seemingly corroborative evidence and the police officer's inability to witness the actual criminal activity, this Court refused to allow an officer's personal observance of innocent conduct to support the informant's tip and justify the search.

In this regard, this Court stated:

> When we look to the other parts of the application [for a search warrant], however, we find nothing alleged which would permit the suspicions engendered by the informant's report to ripen into a judgment that a

> crime was probably committed. As we have already seen, the allegations detailing the FBI's surveillance of Spinelli and its investigation of the telephone company records contain no suggestion of criminal conduct when taken by themselves and they are not endowed with an aura of suspicion by virtue of the informant's tip. (Emphasis supplied.)

Spinelli, supra, 393 at 418.

Spinelli cited McCray v. Illinois, 386 U.S. 300 (1961), as the ideal situation where a police officer's observations would suffice as corroboration and would raise a reasonable suspicion of criminal conduct. In McCray, the informant told police that the defendant would be "selling narcotics and had narcotics on his person now in the vicinity of 47th and Calumet." Relying exclusively on the

police officer's personal observance of the defendant conducting various suspicious activities, this Court held that probable cause had been established, and that the subsequent search was valid. McCray, supra, 386 U.S. at 302-304.

The police officers in the instant case, testified that the informant's tip indicated that a white male, seated in a black over gray van, would be at the corner of Sheridan and Buena at 8:00 p.m. to sell cocaine to another individual. In contrast to McCray, however, the police officers upon arrival at the designated location, did not observe anyone approach the van at any time. (Moran, Tr. p. 28). In fact, at the hearing on the motion to suppress,

one of the officers testified that the defendant was not violating any federal or state statute or municipal ordinance at the time he was detained and asked to step out of the van. (Moran, Tr. p. 39). Defendant contends that Spinelli accurately represents this Court's position as to the use of police officers' observations to corroborate an informant's tip. Spinelli reconciles its decision with that in Draper by effectively concluding that unless the informant has provided police with an extremely detailed description of the defendant and his criminal conduct, an officer can only justify a stop based on the informant's tip if the officer has personally observed the defendant engaging in suspicious or criminal

conduct. This interpretation of Spinelli is recognized by the decision in Gates. Like Draper, the police officers in Gates were unable to personally witness the defendants engaging in criminal conduct; however, this Court justified the search warrant on the police officer's independent corroboration and the informant's extremely detailed description of the defendants and their criminal activity.

The present case however lacks both the detail found in Draper and the independent corroboration by police officers as in Gates and Spinelli. The fact that no persons approached the van at anytime is highly significant in that it clearly illustrates that the police did not observe any criminal activity or

even suspicious activity, a requisite to satisfying corroboration under Spinelli. Furthermore, the very fact that a sale between the defendant and another did not occur dispels the informant's overall credibility and mars the reliability of the entire tip.

CONCLUSION

As this Court correctly articulated in Gates, the determination of an informant's reliability to establish probable cause or reasonable suspicion can only be accomplished through a proper examination of the totality of the circumstances. Had the Appellate Court correctly applied "corroboration" under

Spinelli and balanced the lack of corroborative evidence against the informant's showing of "reliability" and "knowledge", it would have concluded that under the totality of the circumstances the informant's tip was unreliable. Consequently, the police officer's subsequent reliance on this tip to establish the reasonable suspicion necessary to justify an investigatory stop was erroneous. Therefore the resulting investigatory stop and detainment of defendant, William Hildmann, was in direct violation of his Fourth Amendment right against unreasonable seizures and must not be upheld.

For the reasons stated above, defendant, William Hildmann, respectfully

submits that this Court should grant this petition for a writ of certiorari.

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APPENDIX

TABLE OF CONTENTS TO APPENDIX

Page

Order of the Illinois Supreme Court denying defendant's petition for leave to appeal, entered October 2, 1984 1

Order of the Appellate Court of of Illinois, First District, disposing of appeal under Supreme Court Rule 23, entered April 16, 1984 2

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT, ILL. 62706
(217) 782-2035

October 2, 1984

Mr. William J. Harte
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No. 60493 People State of Illinois, respondent, vs. William Hildmann, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today has DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Clerk of the Appellate Court on Ocotber 23, 1984.

First Division
April 16, 1984

No. 83-593

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant,	)Appeal from the)Circuit Court of)Cook County.
vs.	)Honorable)Eugene E. Campion,
WILLIAM HILDMANN, Defendant-Appellee.	)Judge Presiding.

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

The defendant, William Hildmann, was charged by complaint with the offenses of possession of a controlled substance and unlawful use of weapons. (Ill. Rev. Stat. 1981, ch. 56 1/2, 1402(a)(2) and ch. 38, par. 24-1(a)(10).) Subsequently, defendant filed a motion to quash his

arrest and suppress evidence. After a hearing, that motion was granted. The State appeals, contending that the trial court erred in granting the motion to suppress since a reliable informant provided the police with information that was independently corroborated by the arresting police officer on the scene and because that police officer then made a proper investigatory stop during which he observed a weapon in plain view. 87 Ill.2d R. 604(a)(1).

At the hearing on the motion to suppress, defendant testified that at aproximately 8 p.m. on November 30, 1981, he was driving a vehicle when a police officer approached him with a drawn gun and motioned for him to get out of that vehicle. At that time, the police officers

did not show him a search or arrest warrant. Defendant was then taken to a police station.

Once at the station, the police officers would not allow defendant to make a phone call until he signed a certain document. Defendant testified that he signed a blank form at approximately midnight. Although defendant maintained that the form was blank, he testified that the document authorized the officers to search his apartment. In addition, defendant denied that he told the police that he had an apartment at 7240 Park Avenue in Summit, Illinois, but he admitted that he had been present at that address sometime in the past. At the conclusion of defendant's testimony, the State made a motion for a directed

finding on defendant's motion to suppress the evidence obtained in the apartment. The trial court granted the motion, but denied the State's motion for a directed finding as to the original arrest.

Officer Barrett Moran testified that an informant stated to him that a black-over-gray van would be present at the intersection of Sheridan Road and Buena Avenue in Chicago at approximately 8 p.m. on that date. Moran was told that at that time, the driver, who was a white male, would have cocaine and he would be present for the purpose of selling the cocaine to another person. The informer's information was based upon a telephone conversation that he had just had with the driver of the van. According to Officer Moran, the informant had supplied

information previously on five or six occasions. As a direct result of that information, fugitives had been arrested. Four other arrests, regarding unlawful drugs, had also been made.

Because the informant indicated that the sale was to occur in 15 minutes, the police officers then left the station immediately and arrived at the intersection minutes later. According to Officer Moran, he did not have time to get an arrest warrant prior to leaving for the intersection.

At the intersection, the officers sat in their vehicle for five to ten minutes. The black-over-gray van then arrived and parked. The officers watched that van for a few minutes and then approached the vehicle and asked the male

white, who was in the driver's seat, to exit from the driver's side of the van. According to Officer Moran, defendant was the driver. As defendant exited the van, the officers observed a .25-caliber automatic pistol laying in full view on the floor of the vehicle. The police officers then seized the pistol and placed defendant under arrest. Two women, who were also in the van, were taken into custody, although they were eventually released. After defendant was taken into custody, Officer Moran entered the van, reached up into a hole cut into a false ceiling above the driver's seat and recovered two packets of white powder, which was subsequently determined to be cocaine. A small packet of cocaine was also found under the rear seat of the

squad car where defendant and the two women were sitting while being transported to the police station. Defendant was advised of his Miranda rights when he arrived at the police station. Defendant then stated that he lived at 7240 Park Avenue in Summit, Illinois. According to Officer Moran, the consent document was completely filled in prior to defendant's signing except for the time when defendant signed it. Dfendant read the document for seven or eight minutes prior to affixing his signature to it. The premises at 7240 Park Avenue were later searched and more than 30 grams of cocaine were recovered from that location.

After hearing this evidence and the arguments of counsel, the trial court granted defendant's motion to quash the

arrest and suppress the evidence seized from the van.[1] The court stated that it based its ruling on the fact that Officer Moran did not establish the basis of the informant's knowledge and that the Aguilar-Spinelli tests were not met.

As stated above, the State contends that the trial court erred in granting defendant's motion to suppress evidence since a reliable informer provided the arresting officers with information that was independently corroborated by those officers at the scene and because the officers then made a proper investigatory stop during which they observed a weapon

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[1]Although it had previously granted the State's motion for a directed finding on defendant's motion as to the evidence seized at the Summit apartment, the court indicated that it was suppressing that evidence as well.

in plain view.

As indicated above, the trial court sustained defendant's motion to quash the arrest and suppress the resulting evidence since it found that the informant, utilized by the police, did not possess the requisite basis of knowledge needed to establish probable cause for defendant's arrest. At the time of the hearing, which took place on April 23, 1982, the following two-prong test was in effect. That standard required the arresting police officers to establish: (1) the credibility and reliability of the informant, and (2) the underlying circumstances or basis of knowledge from which the informant concluded that criminal activity was taking place. Spinelli v. United States (1969), 393

U.S. 410, 21 L. Ed.2d 637, 89 S. Ct. 584 and Aguilar v. Texas (1964), 378 U.S. 108, 12 L. Ed.2d 723, 84 S. Ct. 1509.

In Illinois v. Gates (1983), ___ U.S. ___, 76 L. Ed.2d 527, 103 S. Ct. 2317, the United States Supreme Court disagreed with the interpretations of Aguilar and Spinelli. The Court then went on to modify the Aguilar-Spinelli test by reverting to the "totality of the circumstances" standard which was used prior to the decisions in Aguilar and Spinelli. The Court held that:

> "[T]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."

Although the hearing on defendant's motion took place before the Supreme Court's decision in Gates, this matter should be governed by the standard outlined in Gates. We base this determination on the fact that it has been held that the Gates opinion is to be applied retroactively. (See People v. Seats (5th Dist. 1984), ___ Ill. App.3d _ __, ____ N.E.2d ____, (No. 5-83-0176, filed February 9, 1984).) Under the "totality of the circumstances" test set forth in Gates we believe the police acted properly.

Even if police officers do not have probable cause for an arrest, they may stop a person to investigate possible criminal behavior if sufficient articulable facts exist to support the offi-

cer's belief that the defendant is involved in criminal activity. (Terry v. Ohio (1968), 392 U.S. 1, 21-22, 20 L. Ed.2d 889, 88 S. Ct. 1868.) In order to validly stop someone for investigatory purposes, there must be specific facts, which when taken with inferences from those facts, justify the stop. (Terry v. Ohio, 392 U.S. 1, 21.) The officer's conclusion must be based on more substantial facts than would support a mere hunch, but on less substantial facts than those needed to support a finding of probable cause. (People v. Zielinski (1980), 91 Ill. App.3d 519, 521, 414 N.E.2d 1113.) Moreover, once an individual in a vehicle has been properly detained by the police, those officers may take reasonable precautions for their own

safety, which includes requesting that individual to exit the vehicle. Pennsylvania v. Mimms (1977), 434 U.S. 106, 110-12, 54 L. Ed.2d 331, 98 S. Ct. 330.

In the present matter, the informant told the police that at approximately 8 p.m. on the date in question, a black-over-gray van would be present at the intersection of Sheridan Road and Buena Avenue and that the driver of that van, who would be a white male, would have cocaine and would be present for the purpose of selling the cocaine to another person. The police arrived at that intersection less than 10 minutes later and observed a black-over-gray van with a white male driver, who was defendant. Therefore, the police were able to verify

the information given to them by the informant. In view of these facts, we are of the opinion that once this verification took place, the arresting police officers had specific and articulable facts which warranted their investigatory stop of defendant pursuant to Terry v. Ohio. (See People v. Long (1983), 99 Ill.2d 219, 222-31, 457 N.E.2d 1252.) In addition, under Pennsylvania v. Mimms, the arresting police officers acted properly when they then asked the defendant to exit the van. Once defendant had left the vehicle, police officers then observed a .25-caliber weapon, which was in plain view, on the floor of the van. The seizure of that weapon was proper since it was in plain view. After the weapon was observed and seized, it is

evident that the arresting police officers had probable cause to arrest defendant pursuant to the standard outlined in Illinois v. Gates. The police then properly made a search of the passenger compartment of the van, including the contents of any containers found within the passenger compartment. (New York v. Belton (1981), 453 U.S. 454, 457-463, 69 L. Ed.2d 768, 101 S. Ct. 2860.) In view of our determination,we must conclude that the trial court erred in quashing defendant's arrest and suppressing the evidence that was seized in the van and also in suppressing the evidence that was seized at 7240 Park Avenue in Summit, Illinois.

The order of the circuit court of Cook County, quashing defendant's arrest

and suppressing the evidence seized pursuant thereto, is therefore reversed and the cause is remanded for further proceedings.

Dated at Chicago, Illinois, this 16th day of April, 1984.

BUCKLEY, P.J., McGLOON and CAMPBELL, JJ.

(2)

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NO. 84-877

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

WILLIAM HILDMANN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the Appellate Court of Illinois properly determined that the police made an investigatory stop of petitioner that was valid under Illinois statutory and case law authority and was in accordance with the factors outlined by this Court in Terry v. Ohio, where in this case a previously reliable informant gave the police detailed, first-hand information concerning petitioner's illegal activities which was independently corroborated by the police.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINION BELOW 1

JURISDICTION 3

STATEMENT OF THE CASE 12

REASON FOR DENYING THE PETITION FOR WRIT OF CERTIORARI 12

The Illinois Appellate Court Properly Reversed The Trial Court's Granting Of Petitioner's Motion To Quash Arrest And Suppress Evidence Where A Reliable Informer Provided Police With Detailed Information, Which Was Independently Corroborated And Led To A Proper Investigatory Stop Of Petitioner.

CONCLUSION 22

TABLE OF AUTHORITIES

CASES

Adams v. Williams, 407 U.S. 143, 93 S.Ct. 11, 1921, 32 L.Ed 2d 612 (1972) 18

Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964)..... 19

Draperv.United States, 358 U.S. 307, 79S.Ct.329, 3 L.ED.2d 327(1959)... 20-21

Illinois v. Gates, ___ U.S. ___, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) 18-19,20

Michiganv.Long, ___ U.S. ___, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983) 17

People v. Zielinski, 91 Ill. App.3d 519, 11, 414 N.E.2d 1113 (1st Dist. 1980)..... 16

Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969)..... 19

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)..... 13,15

STATUTES

Ill. Rev. Stat. 1983, ch. 38,
sec. 107-14..... 17

Ill. Rev. Stat. 1983, ch. 38,
sec. 102-15 17

NO. 84-877

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WILLIAM HILDMANN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF
CERTIORARI TO THE APPELLATE
COURT OF ILLINOIS, FIRST DISTRICT

OPINION BELOW

The order of the Appellate Court of Illinois, First District, reversing and remanding the trial court's decision, was issued as an unpublished order pursuant to Illinois Supreme Court Rule 23; Ill. Rev.

Stat. 1983, ch. 110A, Rule 23. The text of the order disposing of the appeal is set out in full in the Petition for Writ of Certiorari, Appendix 2.

JURISDICTION

The jurisdictional requisites have been set forth in the Petition for Writ of Certiorari. However, as treated more fully within the following argument, the respondent believes that the petition has failed to show any good reason for this Court to exercise jurisdiction to review the judgment in question by writ of certiorari.

STATEMENT OF THE CASE

On November 30, 1981, the petitioner, William Hildmann, was arrested and charged in the Circuit Court of Cook County, Illinois with possession of a controlled

substance and unlawful use of weapons. (R. C7) Prior to trial petitioner filed a Motion to Quash Arrest and Suppress Evidence. (R. C11-C13) After a hearing, the trial court granted petitioner's motion. (R. 50) The People appealed from the trial court's order quashing the arrest and suppressing evidence. The Illinois Appellate Court reversed the trial court's ruling in an order pursuant to Illinois Supreme Court Rule 23. (Appendix 2) Petitioner's leave to appeal to the Supreme Court of Illinois was denied. (Appendix 1)

At the hearing on the motion to suppress, petitioner testified that at approximately 8:00 p.m. on November 30, 1981, he was driving a van when a police officer approached him with a drawn gun and motioned for him to get out of that vehicle. (R. 2-4) Petitioner claimed that the

officers failed to show him a search or arrest warrant. (R. 4) Petitioner was then taken to a nearby police station. (R. 5)

Petitioner stated that the police officers would not allow him to make a phone call until he signed a certain document. (R. 6) He claimed that the officers mistreated him because he refused to sign. (R. 7-10) Petitioner testified that he signed a blank form at approximately midnight. (R. 11) Although petitioner maintained that the form was blank, he testified that he knew the document authorized the officers to search his apartment. (R. 6, 12) Petitioner denied that he told the police he had an apartment at 7240 Park Avenue in Summit, Illinois; but he admitted that he had been present at that address sometime in the

past. (R. 20, 33)

At the conclusion of defendant's testimony, the prosecution made a motion for a directed finding on petitioner's motion to suppress the evidence obtained in the apartment. (R. 21-22) The trial court granted that motion, but denied the prosecutor's motion for a directed finding as to the original arrest. (R.22-23)

Chicago police officer Barrett Moran testifed that at about 7:45 p.m. on November 30, 1981, an informant told him that a black-over-gray van would be parked at the intersection of Sheridan Road and Buena Avenue in Chicago at approximately 8:00 p.m. that same evening. (R. 24-25) Moran was told that the driver of the van would be a white male who had cocaine in his possession. The driver would be present at the specific place and time for the

purpose of selling the cocaine to another person. The informant based his knowledge on a telephone conversation that he had just had with the driver of the van. (R. 25)

Officer Moran had received information from that particular informant on five or six previous occasions. (R. 25) As a direct result of that information fugitives had been arrested, in addition to four other arrests made regarding illegal drugs. (R. 26-27)

Because the informant indicated that the sale was to occur in 15 minutes, the police officers then left the station immediately and arrived at the intersection minutes later. (R. 27) Officer Moran stated that 15 minutes was not enough time to get an arrest warrant and arrive at the intersection at the designated time. (R. 28)

Officer Moran identified petitioner as the driver of the van. (R. 28) As petitioner exited the van, the officers observed a .25 caliber automative pistol lying in full view on the floor of the van. The police officers then seized the pistol and placed petitioner under arrest. Two women who were also in the van were taken into custody, but were later released. (R. 29)

After defendant's arrest, Officer Moran entered the van while it was still at the intersection and searched the area of the driver's seat where petitioner had been sitting. Directly above the driver's seat was a hole cut into a false ceiling. Officer Moran reached up into the hole and recovered two packets of white powder in clear plastic bags. (R. 29) The white powder was subsequently determined to be

cocaine. Another small packet of cocaine was found under the back seat of the squad car where defendant and the two women were sitting while being transported to the police station. (R. 30)

At the station, defendant was advised of his Miranda rights. (R. 31) Defendant admitted that he lived at 7240 Park Avenue in Summit, Illinois. (R. 33) Just before 10:00 p.m. Officer Moran presented petitioner with a consent to search document. (R. 33-34) Petitioner was allowed to read the document for 7 or 8 minutes before he signed it. (R. 34) The document was completely filled in prior to defendant's signing except for the time when defendant signed it. The document was signed and witnessed at 10:00 p.m.

The police searched the premises at 7240 Park Avenue and seized the following:

six clear plastic bags, each containing white powder; three bottles containing over 60 different colored pills; one clear plastic bag containing crushed green leaves; a scale; a strainer; a grinder; a hypodermic needle; several small screens; and razor blades. (R. C9)

After hearing the evidence and the arguments of counsel, the trial court granted petitioner's motion to quash the arrest and suppress the evidence. (R. 50) The trial court stated it based its ruling on the fact that Officer Moran did not establish the basis of the informant's knowledge and that the Aguilar-Spinelli tests were not met.

THE PEOPLE'S APPEAL

Pursuant to an appeal by the respondent from the trial court's ruling, the

Appellate Court reversed the trial court and ruled that the police corroboration of a reliable informant's tip led to a proper investigatory stop. Observance of petitioner's gun in plain view provided probable cause to arrest him for unlawful possession of a weapon, which then justified the subsequent search of the van.

Following the reversal by the Appellate Court of the trial court's ruling on his motion, the petitioner sought leave to appeal to the Supreme Court of Illinois. On October 2, 1984, the Supreme Court of Illinois denied his petition for leave to appeal.

REASON FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

THE ILLINOIS APPELLATE COURT PROPERLY REVERSED THE TRIAL COURT'S GRANTING OF PETITIONER'S MOTION TO QUASH ARREST AND SUPPRESS EVIDENCE WHERE A RELIABLE INFORMER PROVIDED POLICE WITH DETAILED INFORMATION, WHICH WAS INDEPENDENTLY CORROBORATED AND LED TO A PROPER INVESTIGATORY STOP OF PETITIONER.

The petitioner contends that the Appellate Court erred in reversing the trial court's decision to quash petitioner's arrest and suppress the resulting evidence. He argues that the police informant's tip was unreliable, uncorroborated, and failed to justify the investigatory stop of petitioner.

The respondent maintains that the Appellate Court's reversal was proper under both state and federal law because the informant's tip was both reliable and independently corroborated and supported the investigatory stop of petitioner. Illinois statutory and case law independently supports the Appellate Court's conclusion that the investigatory stop of petitioner was lawful. Furthermore, the investigatory stop of petitioner was lawful under this Court's decision in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

On the night in question, the informant told police that at approximately 8:00 p.m. on that same evening, a black-over-gray van would be present at the intersection of Sheridan Road and Buena Avenue and that the driver of that van would be a

white man. The informant, who had just spoken to the driver, also told police that the driver would have cocaine and would be present for the purpose of selling cocaine to another person.

The police had used this informant five or six times before. In the past the informant had given police accurate information that had resulted in several drug arrests.

The police arrived at the intersection of Sheridan and Buena 10 minutes later. A few minutes after that at 8:00 p.m., they observed a black-over-gray van with a white male driver parked in the intersection. Therefore, the police were able to verify the information given to them by the informant through first-hand observation.

Petitioner contends that the appellate court erred in finding the police had re-

liable information to make a proper investigatory stop of petitioner under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

In Terry this Court ruled that an officer may approach a person for purposes of investigating possible criminal behavior, even though there is no probable cause to arrest. A "stop" by police officers must be justified by "specific and articulable facts, which, taken together with rational inferences from those facts reasonable warrant that intrusion." Id. at 21.

The Appellate Court of Illinois also set out an adequate independent state basis for upholding the lawfulness of the police conduct. In Illinois an investigatory stop may be made of a motorist if the officer has reasonable suspicion of the

commission of a crime. People v. Zielinski, 91 Ill. App.3d 519, 521, 414 N.E.2d 1113 (1st Dist. 1980).

One source for the Zelinski decision is Ill. Rev. Stat. 1983, ch. 38, sec. 107-14, which provides:

> Temporary Questioning Without Arrest.
>
> A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense as defined in Section 102-15 of this Code, and may demand the name and address of the person and an explanation of his actions. Such detention and temporary questioning will be conducted in the vicinity of

where the person was stopped.

Ill. Rev. Stat. 1983, ch. 38, sec. 102-15 defines "offense" as a violation of any penal statute of the State of Illinois.

The Appellate Court clearly based its decision on both Illinois and federal law. In Michigan v. Long, ___ U.S. ___, 103 S.Ct. 3469, 3476, 77 L.Ed.2d 1201 (1983) this Court announced the following principle:

> If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate and independent grounds, we, of course, will not undertake to review the decision.

In view of the Illinois case law and statutes, it is clear that the appellate court properly applied the above standards

to the instant case; therefore this Court has no jurisdiction. The police officers received reliable information from a reliable source and made a proper stop of petitioner after verifying the facts for themselves. This Court condoned such police work in Adams v. Williams, 407 U.S. 193, 935 S.Ct. 1921, 32 L.Ed.2d 612 (1972):

> A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information may be most reasonable in light of facts known to the officer at the time. [Id. at 147.]

The petitioner's contention that the Illinois Appellate Court misapplied the totality of circumstances test, outlined in Illinois v. Gates, in determining the veracity of the informant's tip has no basis in

law or fact. In Illinois v. Gates, ___ U.S. ___, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) this Court ruled that a "totality of circumstances standard permits the relative weights of all the various indicia of reliability attending an informant's tip." Thus, the Gates decision retired the rigid two-pronged test set forth in Aguilar v. Texas, 378 U.S. 108, 82 S.Ct. 1509, 12 L.Ed.2d 723 (1964) and Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969). Gates supra, at 2331.

Specifically, an application of the totality of circumstances standard requires a balanced assessment of the following factors: the informant's previous reliability of predictions of certain types of crimes; the details of the described wrongdoing; first-hand knowledge of the informant; and the corroboration of the in-

formant's tip by independent police work. Gates, supra, at 2330, 2334.

In the instant case the informant had provided police with information concerning illegal narcotics, which resulted in several arrests. The informant told police that a white male driving a black-over-gray van would park at a specific location at the specific time. Just prior to calling the police, the informant had spoken to the driver on the phone. Ten minutes later, the police arrived to obeserve the facts exactly as the informant had told them, except they saw no buying or selling of drugs. The fact that certain details of the informant's information proved true lends credence to those details which were not confirmed. Draper v. United States, 358 U.S. 307, 313, 79 S.Ct. 329, 3 L.Ed.2d 327 (1959).

Clearly, the investigatory stop of petitioner was proper because the information received from the informer was both reliable and independently corroborated. Thus, the Illinois Appellate Court's reversal of the trial court's granting of petitioner's motion to quash the arrest and suppress the evidence was based on well-settled state and federal law. And since the Illinois law adequately and independently supports the Appellate Court's decision, this Court has no jurisdiction.

Thus, the petitioner has failed to show any need for this Court, in its sound discretion, to grant his petition. There are no exceptional circumstances of any kind which would warrant this Court to review the finding of the Illinois Appellate Court.

CONCLUSION

The People of the State of Illinois respectfully request that the petition for a writ of certiorari be denied.

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